



DEPARTMENT OF JUSTICE
Drug Enforcement Administration

Shah M. Mairuz Zaman, M.D.; Decision and Order

On December 30, 2021, a former Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Shah M. Mairuz Zaman, M.D. (hereinafter, Registrant) of Poughkeepsie, New York. OSC, at 1 and 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. AM9630080. *Id.* at 1. It alleged that Registrant is "without authority to handle controlled substances in New York, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

Specifically, the OSC alleged that on September 14, 2021, the New York State Education Department, Office of Professional Misconduct indefinitely suspended Registrant's state medical license and required its surrender after finding that Registrant "had committed professional misconduct by failing to pay child support and maintenance." *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

Adequacy of Service

In a Declaration dated April 25, 2022, a Diversion Investigator (hereinafter, the DI) assigned to the New York Field Division stated that on February 1, 2022, she and another DI traveled to Registrant's registered address to attempt service of the OSC, but Registrant was not there, and a receptionist at the registered address "stated that she had not seen [Registrant] in months, that his office had been cleaned out, that his mailbox was completely full, and that he had left no forwarding address." Request for Final Agency Action (hereinafter RFAA), Exhibit

(hereinafter, RFAAX) 3 (DI's Declaration), at 2. The DI also stated that on the same day, she and the second DI tried to serve the OSC to Registrant at three additional addresses that DEA had determined were potential residences of Registrant, but these attempts were unsuccessful as Registrant was not found at any of them. *Id.* Finally, the DI stated that on February 2, 2022, she sent a copy of the OSC to Registrant via his registered email address. *Id.* The DI stated that she did not receive any indication that the email was not delivered and that her review of her email system showed that the email had been delivered. *Id.* at 2-3; *see also id.* at Appendix (hereinafter, App.) B.

The Government forwarded its RFAA, along with the evidentiary record, to this office on April 27, 2022. In its RFAA, the Government represents that neither Registrant, nor any attorney representing Registrant, has requested a hearing or submitted a written statement. RFAA, at 1-2. The Government seeks revocation of Registrant's DEA registration because Registrant lacks authority to handle controlled substances in New York, the state in which he is registered with the DEA. *Id.* at 1.

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on February 2, 2022. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the DI's Declaration, the Government's written representations, and my review of the record, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement or corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

FINDINGS OF FACT

Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. AM9630080 at the registered address of 243 North Road, Suite 201-South, Poughkeepsie, New York 12601. RFAAX 1 (Certificate of Registration). Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expires on May 31, 2024. *Id.*

The Status of Registrant's State License

On September 8, 2021, the University of the State of New York issued a Report of the Regents Review Committee (hereinafter, Report) as part of a disciplinary proceeding against Registrant.¹ RFAAX 3, App. A, at 2. According to the Report, Registrant was the respondent in post-divorce proceedings in the Columbia County Supreme Court, which determined that Registrant was in default for child and/or spousal support. *Id.* Accordingly, the Columbia County Supreme Court ordered the disciplinary proceeding against Registrant to suspend his license as a physician in the state of New York. *Id.* The Report found that Registrant's failure to pay child and/or spousal support constituted professional misconduct and recommended that his license be indefinitely suspended. *Id.* at 5-6. On September 14, 2021, the University of the State of New York issued an order indefinitely suspending Registrant's New York medical license until Registrant "has made full payment of all arrears of child support and maintenance." *Id.* at 9-10. On September 17, 2021, the New York State Education Department, Office of Professional Discipline notified Registrant by letter of the order and directed Registrant to surrender his New York medical license and registration. *Id.* at 1.

According to New York's online records, of which I take official notice, Registrant's New York medical license is still indefinitely suspended.² Office of the Professions Verification

¹ It is noted that Registrant's name is listed in the New York licensing actions in Appendix A as "Shah Mohammad Maniruz Zaman"; however, substantial evidence on the record supports my finding that this person is the same as Registrant.

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C.

Searches, www.op.nysed.gov/opsearches.htm (last visited date of signature of this Order).

Accordingly, I find that Registrant is not currently licensed to engage in the practice of medicine in New York, the state in which he is registered with the DEA.

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority

§ 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.usdoj.gov.

in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 FR at 27,617.

According to the New York Controlled Substances Act (hereinafter, the Act), “[i]t shall be unlawful for any person to manufacture, sell, prescribe, distribute, dispense, administer, possess, have under his control, abandon, or transport a controlled substance except as expressly allowed by this article.” N.Y. Pub. Health Law § 3304 (McKinney 2022). Further, the Act defines a “practitioner” as “[a] physician . . . or other person licensed, or otherwise permitted to dispense, administer or conduct research with respect to a controlled substance in the course of a licensed professional practice” *Id.* at § 3302(27). Finally, New York regulations state that “[a] prescription for a controlled substance may be issued only by a practitioner who is . . . authorized to prescribe controlled substances pursuant to his licensed professional practice” N.Y. Comp. Codes R. & Regs. tit. 10, § 80.64 (2022).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in New York. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in New York. Thus, because Registrant lacks authority to practice medicine in New York and, therefore, is not authorized to handle controlled substances in New York, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant's DEA registration be revoked.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. AM9630080 issued to Shah M. Mairuz Zaman, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C.

823(f), I hereby deny any pending application of Shah M. Mairuz Zaman, M.D. to renew or modify this registration, as well as any other pending application of Shah M. Mairuz Zaman, M.D. for additional registration in New York. This Order is effective [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Anne Milgram,
Administrator.

[FR Doc. 2022-11511 Filed: 5/27/2022 8:45 am; Publication Date: 5/31/2022]